viamedia

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57**

Dear Ms. Dortch:

I write on behalf of Viamedia, Inc. ("Viamedia") in response to the Notice of *Ex Parte* Communication, filed by Comcast Corp. ("Comcast") on August 22, 2014 regarding the above-referenced proceeding (the "*Ex Parte* Filing") which mentions Viamedia. Specifically, Comcast writes in its *Ex Parte* Filing that consent to its proposed acquisition of Time Warner Cable, Inc. ("TWC") and related divestiture transactions with Charter Communications, Inc. ("Charter") and SpinCo (collectively, the "Transactions") would benefit the public interest. Among other things, the *Ex Parte* Filing alleges that concerns regarding the spot cable advertising marketplace are unfounded and repeats Comcast's prior claim that Commission consent to the proposed Transactions is the company's sole path to becoming an innovative and thus more vibrant advertising competitor. As discussed below, Viamedia respectfully disagrees, as do an array of other commenters.

Despite Comcast's protestations, the Transactions will not serve the public interest. Rather, eliminating TWC and facilitating Comcast's ability to achieve significant growth and even greater scale will have a direct and harmful effect on competition within the $5.4 billion spot cable advertising market. Thus, conditions to remedy these harms <u>are</u> specific to the proposed Transactions. Further, the *Ex Parte* Filing conveniently omits the fact that along with the 29.2 million subscriber homes post-merger, it also would gain another 19 million homes through its spot cable advertising representation business – commanding a 71 percent share (49 million of 69 million cable homes) of the spot cable advertising market. This 71 percent share is in addition to its 80 percent ownership of NCC and 54 percent control of all of the Interconnects. Holding the dominant share of cable homes, owning NCC, and controlling the Interconnects are the three bottlenecks that would allow Comcast absolute control of the distinct cable spot cable advertising market. As a result, Viamedia's August 25, 2014 comments in the above-referenced docket,[1] request that the Commission impose transaction-specific conditions to protect independent multi-channel video programming distributors ("MVPDs"), advertisers, and independent spot cable advertising representation firms.

An Array of Commenters Share Viamedia's Concern About The Harmful Effect That Consummation Of The Proposed Transactions Will Have On The Spot Cable Advertising Marketplace

As a preliminary matter, the *Ex Parte* Filing refers to Viamedia as "an advertising broker."[2] In reality, Viamedia is the largest independent spot cable advertising representative of MVPDs. Viamedia offers MVPDs a turn-key solution for all services that they need to sell, bill for, and insert spot cable advertising into television programming. At present, Viamedia directly competes with Comcast's and TWC's subsidiaries, Comcast Spotlight and TWC Media Sales, respectively, each of which also provide those same services. Comcast Spotlight and TWC Media Sales are the first and second largest providers of spot cable advertising-related services. Each competes head-to-head in many markets for both advertising dollars and to represent other MVPDs for placement of spot cable advertising.

Perhaps more troublesome, the *Ex Parte* Filing argues that Viamedia's advocacy on behalf of independent MVPDs and small business advertisers is driven by its own "business objectives."[3] In fact, Viamedia's advocacy is consistent with the concerns expressed by much of the cable advertising industry, as supported in comments from the American Cable Association, RCN Telecom Services, LLC/Grande Communications Networks, LLC, and CenturyLink.[4] Like Viamedia, these market participants seek to maintain: competition within the spot cable advertising market, a meaningful choice among spot cable advertising representation service providers, and open access to <u>all</u> Interconnects. As these entities explain, consent to the proposed Transactions would eliminate the existing head-to-head competition between Comcast Spotlight and TWC Media Sales. Further, consent to the proposed Transactions would allow Comcast to force smaller MVPDs to enter into spot cable advertising representation contracts with Comcast in cases where the MVPD needs access to all of the Interconnects (something Comcast has done in the past and must be prevented from doing in the future).

[1] Viamedia, Inc. Comments in Support of Conditions, MB Docket No. 14-57 (Aug. 25, 2014) ("Comments")
[2] *Ex Parte* filing at 5 fn. 21.
[3] *Id.* at 5.
[4] American Cable Association Comments, MB Docket No. 14-57 (Aug. 25, 2014); RCN Telecom Services, LLC, Grande Communications Networks, LLC, and Choice Cable TV of Puerto Rico, Petition to Deny Applications or Condition Consent, MB Docket No. 14-57 (Aug. 25, 2014); Comments of CenturyLink, Inc., MB Docket No. 14-57 (Aug. 25, 2014).

Spot Cable Advertising Is A Distinct, $5.4 Billion Product Market That Must Be Protected

As set forth in Viamedia's comments here and at the New York Public Service Commission,[5] the spot cable advertising market is a distinct, $5.4 billion product market with a unique competitive dynamic. The *Ex Parte* Filing argues that "cable advertising is just a small part of the local advertising marketplace, and advertisers have numerous local options both on television and elsewhere."[6] Just the page before, however, the *Ex Parte* filing reports that "the Commission and DOJ have found that cable spot advertising and broadcast advertising are not close substitutes and, therefore constitute two separate product markets."[7] Moreover, the statement that "only seven percent of local advertising revenues go to cable"[8] is irrelevant given that other advertising options – either on television in the form of broadcast advertising or other media – are <u>not</u> substitutes for spot cable advertising under the antitrust laws. While the *Ex Parte* Filing states that the Transactions critics' allegations overestimate the significance of cable advertising's role, Comcast Spotlight's own website highlights the benefits and importance of spot cable advertising.[9]

Comcast's acquisition of TWC would increase Comcast's dominance to an estimated $4.5 billion of the $5.4 billion market with an 80 percent ownership share of NCC, control of 54 percent of all Interconnects, and direct control of the local cable spot advertising into 49 million of 69 million cable TV households.

Comcast's Proposed Increased Control Of Interconnects And NCC Media Will Harm Competition

Viamedia agrees that Interconnects and NCC Media have played an important, pro-competitive role in the spot cable advertising market. Interconnects were originally designed as independent third-party entities and employed open architecture to allow any and all regional advertisers to easily and efficiently advertise across all MVPDs in a given area. Likewise for all MVPDs and their representatives.

Similarly, NCC Media allows national advertisers to synchronize advertisements on all MVPDs in a given designated market area ("DMA"). In recent years, however, Comcast has taken control over a significant number of Interconnects, operating them in a manner that often eliminates this open access. Also, Comcast has come to control a majority share of NCC Media today and would control 80 percent of NCC Media following consummation of the proposed Transactions. Moreover, Comcast already exercises its dominance to exclude independent MVPDs and their spot cable advertising representatives from the Interconnects in certain markets, and to limit or eliminate their access to NCC Media in the future.[10] If independent

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[5] *See* Viamedia, Inc. Comments in Support of Conditions, MB Docket No. 14-57 (Aug. 25, 2014); Viamedia, Inc. Comments, Case 14-M-0183, N.Y. P.S.C. (Aug. 8, 2014).
[6] *Ex Parte* Filing at 5.
[7] *Id.* at 4.
[8] *Id.*
[9] *See* http://www.comcastspotlight.com/advertising-solutions/tv-advertising.
[10] *See* Viamedia Comments at 9-10.

MVPDs are cut off from NCC Media or Interconnects, they will have no competitive alternative for spot cable advertising from national or Interconnect advertisers. As a result, conditions are required to ensure that NCC and Interconnect agreements are offered on fair and reasonable terms, regardless of who controls those entities.

Spot Cable Advertising Is A "Transaction-Specific Issue"

Comcast urges the Commission to "focus on *transaction-specific* issues."[11] The issues raised by Viamedia and others regarding the spot cable advertising market are transaction-specific. Here is why: Spot cable advertising is an integral part of the cable marketplace. As discussed above, Comcast and TWC are each active participants in the spot cable advertising market. Consummation of the Transactions will eliminate TWC. Further, it will provide Comcast with additional control over the Interconnects and an even greater ownership share of NCC Media. Increasing the number of Interconnects that Comcast controls will increase the company's leverage over advertisers and independent MVPDs who will have no other choice but to contract with Comcast. In markets where Comcast controls the Interconnect, it also has a large share of the video services market. In many of these markets, Comcast Spotlight also has a large share of the spot cable advertising representation market.

Eliminating choice in the spot cable advertising market will harm smaller, independent MVPDs, small businesses seeking to place ads, and ultimately consumers. With TWC eliminated from the market, together with Comcast's extensive control over the Interconnects and NCC, these MVPDs will have no alternative other than to contract with direct competitor Comcast, which will put them at a disadvantage and limit their ability to compete on equal footing. In addition, Comcast will have a greater ability to bundle advertising and spot cable representation services across Comcast and TWC-controlled Interconnects.

Competition, Not Consolidation, Drives Technological Advances That Benefit Consumers

The *Ex Parte* Filing argues "that the Transactions will enable the combined company to become a stronger advertising competitor and will benefit advertisers by facilitating the development and deployment of next-generation advertising technologies, such as addressable advertising."[12] To support this statement, Comcast appears to cite a Commission order in a previous transaction. In reality, if the proposed Transactions are consummated, Comcast's increased dominance means that any technological development in next-generation advertising technologies would be on Comcast's terms. Comcast would have a greater incentive to stifle development of any disruptive technology developments that benefit consumers at the expense of Comcast's bottom line. Any technology company that wanted to enter the $5.4 billion market would have to pass through the gates of Comcast to achieve viable scale.

History has shown both generally and in the media industry specifically that competition drives innovation better than monopolies. Comcast also fails to assert any reasons why its acquisition of TWC is necessary for it to invest and develop new technologies. With Comcast's

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[11] *Ex Parte* filing at 1 (emphasis in original).
[12] *Id.* at 4.

size and resources today, it certainly cannot be limited in its ability to compete for advertising. Indeed, as noted by Senator Franken, Comcast not long ago told Wall Street analysts that it has the meaningful scale to compete.[13]

Conclusion

The *Ex Parte* Filing states that consent to the proposed Transactions would cause "no harm to competition."[14] As demonstrated here, in our Comments and the comments by others, this certainly is not the case. The question is the extent of the harm. Therefore, Viamedia encourages the Commission to impose certain conditions, consistent with the public interest, to limit the wide-ranging anticompetitive effects that would otherwise likely result from consent to the Transactions.

Respectfully submitted,

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President & Chief Executive Officer
Viamedia, Inc.

cc: Laura Arcadipane
Rebekah Goodheart
Adonis Hoffman
Erin McGrath

[13] Senator Al Franken, Statement in Opposition to Comcast's Proposed Acquisition of Time Warner Cable, MB Docket No. 14-57 at 10-12 (Aug. 25, 2014).
[14] *Ex Parte* filing at 5.